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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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AZARINE RICHARDS,

Plaintiff,

- against -

BJ'S WHOLESALE CLUB, INC. and
NATICK NY FREEPORT REALTY CORP,

Defendants.
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ORDER

16 Civ. 7336 (NRB)

NAOMI REICE BUCHWALD
UNITED STATES DISTRICT JUDGE

Plaintiff's motion for remand is denied. Defendant BJ's Wholesale Club, Inc. ("BJ's") filed a notice of removal on September 20, 2016, within 30 days of being served with a paper stating, for the first time, the amount of damages sought by the plaintiff ($5,000,000.00) in this personal injury action, which was filed in New York Supreme Court, Bronx County, on May 29, 2015. See 28 U.S.C. § 1446(b)(3). The parties do not dispute that the substantive requirements for diversity jurisdiction are met.[1] The only issue in dispute is whether the removal was untimely because

[1] We note that the complaint was served on BJ's and on Natick NY Freeport Realty Corp. ("Natick"). It is undisputed that plaintiff is a resident of New York, that BJ's is a foreign corporation with its principal place of business in Massachusetts, and that Natick is an inactive New York corporation that was merged out on August 31, 2012, i.e., before the events alleged in the complaint, which allegedly took place on December 4, 2013. Further, it appears from the record that, to the extent plaintiff ever had claims against Natick, she has chosen not to pursue them. Therefore, diversity of citizenship appears to exist between the parties despite the fact that Natick was named as a defendant in the complaint.

it took place more than one year after the action's commencement. The Court finds that the removal was proper, because plaintiff "has acted in bad faith in order to prevent a defendant from removing the action" within one year of the action's commencement, namely by "deliberately fail[ing] to disclose the actual amount in controversy to prevent removal." 28 U.S.C. § 1446(c).

While plaintiff properly did not state in her complaint the amount of damages she sought, see N.Y. C.P.L.R. 3017(c), under the CPLR the defendant may "at any time request a supplemental demand setting forth the total damage to which the pleader deems himself entitled. A supplemental demand shall be provided by the party bringing the action within fifteen days of the request." Id. On October 29, 2015, defendants served their answer and a demand to specify the amount of damages sought.[2] Plaintiff was therefore obligated to disclose within 15 days the damages amount. She failed to disclose this information until August 21, 2016, however, despite receiving two follow-up letters from defendants requesting that she comply with her discovery obligations and provide the amount. Only after BJ's filed a motion to compel, on July 19, 2016, did plaintiff provide the information. BJ's therefore took

[2] On November 16, 2015, BJ's alone served an amended answer and damages demand.

the proper steps to ascertain the amount in controversy, but was frustrated by plaintiff's improper delay.

Moreover, plaintiff's demand of $5,000,000 far exceeds the amount in controversy threshold of $75,000, making it implausible that, during the one-year period following her filing of the complaint, she intended to seek $75,000 or less. These facts establish that plaintiff "deliberately failed to disclose the actual amount in controversy to prevent removal." 28 U.S.C. § 1446(c)(3)(B). Plaintiff cannot escape this result by pointing to her counsel's lack of awareness of the one-year limitation period for removal, and a strategic desire not to disclose the damages amount while she allegedly continued to receive medical treatment and incur damages. To hold otherwise would allow plaintiffs to unfairly prevent removal through their counsel's ignorance of the law and would invite gamesmanship to interfere with defendants' rights to a federal forum in a diversity case. This is particularly so in a case such as this where the defendant took all reasonable steps to learn the ad damnum amount promptly. Moreover, the proper course for plaintiff to follow was to disclose her damages demand upon request, and then amend the demand later on as needed, as New York procedure allows. See 84 N.Y. Jur. 2d Pleading § 254.

Finally, under the circumstances, plaintiff's request for costs and expenses (including attorneys' fees) incurred as a result of the removal is misplaced and denied.

SO ORDERED.

Dated: New York, New York
January 3, 2017

Naomi Reice Buchwald

NAOMI REICE BUCHWALD
UNITED STATES DISTRICT JUDGE